

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 28, 2006

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2006AP220

Cir. Ct. No. 2004CF3687

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ROBERT JAMES JOHNSON, JR.,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
WILLIAM W. BRASH, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Curley, JJ.

¶1 PER CURIAM. Robert James Johnson, Jr. appeals *pro se* from an order denying his WIS. STAT. § 974.06 (2003-04)¹ postconviction motion. Johnson

¹ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

claims the trial court erred in denying his motion on the grounds that it was procedurally barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). Because the trial court did not err in ruling that Johnson's claims are procedurally barred, we affirm.

BACKGROUND

¶2 On July 13, 2004, Johnson was charged with armed robbery as party to a crime; first-degree reckless injury while armed as a party to a crime; possession of a firearm by a felon as party to a crime; and possession with intent to deliver cocaine. Pursuant to a plea agreement, the first two charges were dismissed.

¶3 On January 27, 2005, Johnson pled guilty to the possession charges and was sentenced to seven years on each count, both consisting of four years of initial confinement followed by three years of extended supervision to be served concurrently. Johnson advised the court that he would not seek postconviction relief. Six months later, Johnson moved the court to provide him with transcripts and other documents. The trial court denied the motion, explaining that:

Where the time of appeal has expired, the court requires the assertion of an arguably meritorious claim for relief before it will consider the production of transcripts. The court will not order the production of transcripts to look for an arguably meritorious claim for relief. The ... transcripts will not be produced at public expense at this time. Defendant may also seek an extension of time from the Court of Appeals in which to file a Notice of Intent

¶4 In October 2005, Johnson filed a *pro se* motion to vacate the judgment and conviction, pursuant to WIS. STAT. § 973.13. The trial court denied the motion, stating:

[T]he defendant filed a *pro se* motion to vacate the judgment of conviction on the basis that the State intentionally delayed filing charges, that the charges were based on false or fraudulent information and weren't supported by the facts, that the defendant was prejudiced, and that trial counsel was ineffective.

Defendant entered a guilty plea in this case. By doing so, he waived his right to challenge the contents of the complaint or anything connected with the filing of the charges. The defendant was apprised of this fact at the time he entered his guilty plea and indicated to Judge Dugan that he understood he was giving up his right to challenge any issues in connection with the criminal complaint.... Accordingly, he cannot raise those issues now.

Defendant's claims of ineffective assistance of counsel are completely conclusory and do not set forth a viable claim for relief. See State v. Bentley, 201 Wis.2d 303 (1996).

¶5 In January 2006, Johnson filed a second postconviction motion, this time citing WIS. STAT. § 974.06. In this motion, Johnson claimed that he was denied his constitutional right to competent counsel and prejudiced by the district attorney's failure to turn over exculpatory evidence. The trial court denied the motion on the basis that it was procedurally barred by *Escalona-Naranjo*:

Section 974.06(4), Wis. Stats., requires a defendant to raise all grounds for postconviction relief in his original motion or appeal. Failure to do so precludes a defendant from raising additional issues, including claims of constitutional or jurisdictional violations, in a subsequent motion or appeal where those issues could have been raised previously. There is no reason why the defendant could not have raised all claims in his first motion. Moreover, the defendant may not raise the same issue in a new motion. Jones (Hollis) v. State, 70 Wis. 2d 62, 73 (1975) (successive motions for postconviction relief raising the same issues and seeking the same relief will not be entertained).

(Citation omitted.)

¶6 Johnson now appeals from that order.

DISCUSSION

¶7 Johnson argues that the trial court should not have denied his motion on procedural grounds and claims that his first postconviction motion was not a WIS. STAT. § 974.06 motion. We reject his arguments and affirm.

¶8 Defendants are not permitted to pursue an endless succession of postconviction remedies:

We need finality in our litigation. Section 974.06(4) compels a prisoner to raise all grounds regarding postconviction relief in his or her original, supplemental or amended motion. Successive motions and appeals, which all could have been brought at the same time, run counter to the design and purpose of the legislation.

Escalona-Naranjo, 185 Wis. 2d at 185. Thus, claims which were raised previously, or could have been, but were not, raised in a prior postconviction motion or on direct appeal, are procedurally barred unless a sufficient reason for failing to raise the issue is presented. *Id.*

¶9 “[D]ue process for a convicted defendant permits him or her a single appeal of that conviction and a single opportunity to raise claims of error” *State ex rel. Macemon v. Christie*, 216 Wis. 2d 337, 343, 576 N.W.2d 84 (Ct. App. 1998). Johnson was already afforded his single opportunity—during his first postconviction motion. We are not persuaded by his contention that because his previous motion was not brought under WIS. STAT. § 973.13 rather than WIS. STAT. § 974.06, the procedural bar does not apply to him. Such an interpretation would provide defendants with the opportunity to file successive postconviction motions raising the same or similar issues simply by referencing different statutory sections. This would defeat the purpose of the *Escalona-Naranjo* rule. We conclude, therefore, that Johnson is procedurally barred from attempting to raise

the same claim, which was raised in the January 2006 motion as well as the additional claims, which could have been raised, in the January 2006 motion.

¶10 Moreover, Johnson has failed to set forth any sufficient reason for his failure to raise the additional claims in his earlier motion. Accordingly, the current claims are procedurally barred and the trial court did not err in so ruling.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

